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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.20 of 2004

1.Rajan
2.Subramani .. Petitioners/A1 & A2

vs.

State by
The Sub-Inspector of Police,
J-2, Emeralad Police Station,
Nilgiris District,
Cr.No.54 of 2001. .. Respondent

Prayer:- This revision petition has been preferred under Section 397 and 401 of Cr.P.C against the judgment dated 8.1.2004 in C.A.No.15 of 2003 passed by the learned Sessions Judge, Nilgiris at Uthagamandalam, modifying the sentence imposed in C.C.No.242 of 2002 dated 4.2.2003 on the file of the learned Judicial Magistrate, Uthagamandalam.

For Petitioners :Mr.S.N.Arunkumar
For Respondent :Mr.V.R.Balasubramanian
Additional Public Prosecutor

JUDGMENT

This revision has been preferred against the judgment in C.A.No.15 of 2003 on the file of the Sessions Judge, Nilgiris at Uthagamandalam, which had arisen out of the judgment in C.C.No.242 of 2002 on the file of the Judicial Magistrate, Uthagamandalam.

2.According to the prosecution, the revision petitioners herein viz. A1 & A2 in C.C.No.242 of 2002, on 26.8.2001 at 9.30 pm at Old Attuboil Village due to previous enmity A1 trespassed into the house of the complainant and attacked him with a vettukathi and when this act of the accused was prevented by the complainant's mother, she was also attacked by A1 resulting in grievous injury on her left wrist and that A1 also criminally

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intimidated the complainant to do way with his life. The charge against A2 is that he abused the complainant in filthy language and caused hurt to the complainant by using a stick. Hence A1 was charged under Section 294(b), 326, 448 & 506(ii) IPC and A2 was charged under Section 294(b), 323 & 448 IPC.

3.The learned Judicial Magistrate had taken the case on file and issued summons to the accused for their appearance and on their appearance furnished copies under Section 207 Cr.P.C., and when charges were framed against the accused as indicated above and explained to them, the accused pleaded not guilty. On the side of the prosecution P.W.1 to P.W.8 were examined and Ex.P.1 to Ex.P.9 were exhibited and M.O.1 to M.O.3 were marked.

4.P.W.1, an injured witness in the occurrence, would depose that on 26.8.2001 at about 9.00 pm while he was chatting with his wife, mother and son in the house, he heard a noise abusing him in filthy language from out side the house and he came out of the house and saw A1-Rajan holding a knife on his right hand and a stick on his left hand followed by A2-Subramani with a stick on his hand abusing him and that when A1 attempted to assault him with the knife, his (P.W.1) mother intervened and she was attacked by A1 on her right hand and that A2 had assaulted him (P.W.1) with a stick on the left side of the forehead and on the left knee causing simple injuries and that he had preferred a complaint with the police under Ex.P.1. He has also identified M.O.1 as the knife used by A1 at the time of the occurrence and M.O.2 as the stick used by A1 and also M.O.3 - stick used by A2 in the occurrence.

5.P.W.2 is the mother of P.W.1, who is also an injured witness. She has corroborated the evidence of P.W.1 to the fact that both the accused came to her house on the occurrence date at 9.30 pm and abused them and that A1 made an attempt to assault her son (P.W.1) and she intervened, but A1 had attacked her also with the knife on her right wrist causing grievous injury and that P.W.1 was also attacked by both the accused with stick, who had sustained injury on the forehead as well as on the knee and that P.W.1 has preferred a complaint with the police.

6.P.W.3 has also corroborated the evidence of P.W.1 & P.W.2.

7.P.W.8 is the Sub-Inspector of Police, who had registered the complaint preferred by P.W.1 on 27.8.2001 at about 3.30 pm under Cr.No.54 of 2001 under Section 323, 324, 448 & 506(ii) IPC. Ex.P.8 is the copy of the FIR. He had visited the place of occurrence and prepared Ex.P.2 observation mahazar in the presence of P.W.4 & P.W.5 and also prepared Ex.P.3, recovery mahazar for knife and sticks used by the accused in the presence of P.W.4. He

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has seized the weapons used by the accused at the time of the occurrence. Ex.P.9 is the rough sketch drawn by P.W.8. He has examined the witnesses and recorded their statements and he has arrested the accused on 28.8.2001 and produced them before the Judicial Magistrate for remand.

8.P.w.6 is the doctor, who had treated P.W.1 and has opined that she had sustained fracture in the right wrist. Ex.P.4 is the X-ray.

9.P.W.7 is the doctor, who had examined P.W.2 on 27.8.2001 at 12.00 noon and issued Ex.P.6 copy of the accident register. Ex.P.7 is the wound certificate relating to P.W.2. He has examined P.W.1 on the same date at about 12.10 pm and issued Ex.P.5 copy of the accident register of the injuries found on the person of P.W.1.

10.After completing the investigation P.W.8 has filed the final report against the accused on 31.10.2001.

11.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., they denied their involvement in the crime. They have not examined any witness on their side by way of defence. After going through the oral and documentary evidence, the learned Judicial Magistrate has found A1 guilty under Sections 326, 448 & 556(ii) IPC and convicted and sentenced to undergo one year RI and a fine of Rs.1,500/- with default sentence under Section 326 IPC and sentenced under Section 448 IPC to undergo one month RI and a fine of Rs.100/- with default sentence and under Section 506(ii) IPC to undergo two months RI and a fine of Rs.250/- with default sentence. The learned Judicial Magistrate has found A2 guilty under Sections 323 & 448 IPC and convicted and sentenced A1 under section 323 IPC to undergo two months RI and a fine of Rs.500/- with default sentence and sentenced under Section 448 IPC to undergo one month RI and a fine of Rs.100/- with default sentence. Aggrieved by the findings of the learned trial Judge, the accused had preferred an appeal before the Sessions Judge, Nilgiris at Uthagamandalam in C.A.No.15 of 2002. The learned Sessions Judge, after hearing both sides and after scanning the evidence, has confirmed the conviction against A1 and A2 and modified the conviction as against A1 from under Section 326 IPC to Section 325 IPC and sentenced A1 to undergo six months RI instead of one year RI, sustaining the other findings of the learned trial judge for both A1 & A2. Aggrieved by the findings of the learned Sessions Judge/Ist Appellate Judge, both the accused have preferred this revision.

12.When the revision was taken up for hearing, the learned counsel for the revision petitioners Thiru.S.N.Arunkumar would represent that he will be confined himself only in respect of

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sentence against A1 & A2. The learned counsel would contend that the observation of the first appellate Court that A1 has caused injury with knife on the wrist only with blend portion of the weapon and this will go to show that there was no intention for A1 to cause any grievous injury on the victim and that the accused were in jail for nearly one month at the time of remand. He would further submit that the period of one month remand may be imposed as a punishment for A1 while enhancing the fine amount for A1 to Rs.6,000/-.

13.Heard the learned Additional Public Prosecutor Mr.V.R.Balasubramanian, who has no serious objection for modifying the sentence against the accused in the above line.

14.In fine, the revision is dismissed confirming the conviction against A1 under Section 325, 448 & 506(ii) IPC and as against A2 under Section 323 & 448 IPC, but the sentence alone is modified for A1 under Section 325 IPC to the period already undergone instead of six months RI and the fine amount is enhanced from Rs.1,500/- to Rs.6,000/- in default to undergo one month SI. The sentence under Section 448 and 506(ii) IPC against A1 is modified to that of the 'period already undergone' instead of 1 month RI under Section 448 and instead of 2 months RI under Section 506(ii) IPC. The sentence against A2 under Section 323 and 448 IPC is modified to that of the period already undergone instead of 2 months RI under Section 323 IPC and the period already undergone instead of 2 months RI and under section 448 IPC to undergo 1 month RI with default sentence. In other respects, the findings of the learned first appellate in C.A.No.15 of 2003 on the file of the Sessions Judge, Nilgiris at Uthaamandalam, is confirmed. The fine amount of Rs.6,000/- is to be given to P.W.2 as compensation.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

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To,

1.The Sessions Judge,
Nilgiris at Uthagamandalam.

2.The Judicial Magistrate, Uthagamandalam.

3.-do- The Chief Judicial Magistrate, Uthagamandalam.

4.The Public Prosecutor, High Court, Madras.

5.The Inspector of Police,
J-2, Emeralad Police Station,
Nilgiris District,
Crime No.54 of 2001.

6.The Superintendent of Police,
(The Officer in-charge)
Sub-Jail. Ooty.

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